

FCC MAIL SECTION

FEB 10 10 48 AM '97 Federal Communications Commission

DA 97-222

DISPATCH

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Garden City, Missouri)

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MM Docket No. 97-53  
RM-9003

**NOTICE OF PROPOSED RULE MAKING****Adopted: January 31, 1997****Released: February 7, 1997****Comment Date: March 31, 1997****Reply Date: April 15, 1997**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by R. Lee Wheeler and Sarah H. Wheeler ("petitioners") requesting the allotment of Channel 287A to Garden City, Missouri, as that community's first local service. Petitioners submitted information in support of the proposal and indicated they would file an application for Channel 287A at Garden City.

2. In support of the proposal, petitioners state that Garden City is an incorporated community with a population of 1,125 people according to the 1990 U.S. Census. Further, the community has its own post office and zip code along with its own fire department and police department. Petitioners state that a mayor and a board of alderman form the local government. Petitioners contend that Garden City is a growing community that has experienced a 20% increase in population between 1980 and 1990. Petitioners believe that allotment of an FM channel to Garden City would be in the public interest.

3. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Garden City. A staff engineering analysis indicates that Channel 287A can be allotted to Garden City, Missouri, consistent with the minimum distance separation requirements of the Commission's Rules provide there is a site restriction 0.6 kilometers (0.4

miles) west of the community.<sup>1</sup> The site restriction will prevent a conflict with Station KXXK, Channel 289C2, Knob Noster, Missouri.

4. In view of the fact that the proposed allotment would provide a first local service to Garden City, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Garden City, Missouri	-----	287A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **March 31, 1997**, and reply comments on or before **April 15, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

R. Lee and Sarah H. Wheeler  
3718 W. 52nd Terrace  
Shawnee Mission,  
Kansas 66205

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the

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<sup>1</sup> The coordinates for Channel 287A at Garden City are 38-33-49 and 94-11-53.

Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.